SUMMONS IN CHAMBERS.

Laycock for the plaintiffs.

C. C. Tan for the defendants.

The plaintiffs applied for summary judgment under O. XIV and their summons in chambers was dismissed by the Registrar. The plaintiffs thereupon appealed to the Judge.

The facts are sufficiently set out in the judgment.

Terrell J.: The plaintiffs applied for summary judgment. The application was opposed on three grounds: (1) that the statement of claim indorsed on the writ was not signed; (2) that the sum claimed was not in Straits currency; and, (3) on the merits.

At the hearing before the Registrar the second objection was upheld and at the request of the plaintiffs the application was referred to a Judge.

I agree with the learned Registrar that the statement of claim was properly signed. The signature of the solicitors appears at the foot of the second page of the writ, after the notices which have to be added so as to comply with the statutory form. There is no provision as to the exact place where the signature should appear and it seems to me that if it appears at the bottom of the page that is sufficient. I do not think that the defence on the merits can be sustained. The defendants' affidavit does not question the jurisdiction of the Court in Hong Kong, nor does it allege fraud. The foreign judgment is accordingly *prima facie* enforceable.

As regards the second objection, I have felt some doubt. The rule is that a judgment can only be in local currency, and from this it would appear to follow that the claim must also be expressed in local currency. The forms in *Bullen & Leake* referring to foreign bills of exchange always show the amount in sterling which is claimed to be the equivalent of the amount of the sum in a foreign currency (see 9th ed., pp. 118 *seq.*).

Mr. Laycock referred me to the case of *Scott* v. *Bevan,* 109 E.R. 1073. That case establishes that in a suit on a foreign judgment the rate of exchange should be calculated as on the date that the foreign judgment is obtained. The plaintiff therefore would have had no difficulty in calculating the equivalent sum in Straits currency as on the date that the Hong Kong judgment was obtained.

It was also argued that if a foreign judgment is registered the amount of the judgment must necessarily be in a foreign currency. But this is by no means the case in England. Under Order XLIB, rule 2(2) the affidavit in support of the application to register the judgment must state the amount which the foreign judgment represents in English currency, and presumably when the foreign judgment is registered such sum is specified in the order. It is true that Order XLIB, rule 2(2) does not appear in the Rules made under Ordinance No. 185 (Reciprocal Enforcement of Judgments), but that omission cannot affect the general principle that a money claim must be expressed in local currency. The plaintiffs can, of course, amend his writ without leave under Order 29, rule 2.

So far as the present application is concerned, it must be dismissed with costs to be taxed.

Judgment accordingly.

Solicitors: *Braddell Bros.; Rodyk & Davidson.*

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[111] F.M.S. REPORTS [111]

NG WUI PIANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomas C.J.) February 22, 1936]

[Selangor Magistrate's Criminal Appeal No. 45 of 1935]

Electricity Enactment (Cap. 201), ss.2 and 43 — Conviction for dishonestly preventing a meter from duly recording the output of electrical energy — Meaning of "Consumer."

In construing the definition of "consumer" in section 2 of the Electricity Enactment (Cap. 201) there should be no narrowing of its plain meaning by the importation of limitations.

It is wide enough to include the landlord, the tenant and also the person supplied.

MAGISTRATE'S APPEAL.

The Hon. Mr. E. D. Shearn (with him *S. M. Yong*) for the appellant.

H. C. Willan (Deputy Legal Adviser) for the respondent.

It is conceded that it was not shewn that the appellant himself did any act which prevented the meter from recording. For the presumption to arise under section 40(xi) of the Electricity Enactment it was necessary for the prosecution to establish that the appellant was the consumer using the meter and that while the meter was in his custody or control artificial means were used to prevent it from registering duly.

The appellant was not the consumer, see definition of "consumer" in section 2. The premises belonged to the Chetty owner. The appellant was not supplied with energy and he did not use the meter. He was a manager only and his employers were supplied and they used the meter. A partner of the firm employing him was in Klang at all material times. The appellant had no financial liability and no right in his own person to a supply. The consumer is the department's customer — see section 43(w) and (y) and the rules made under the Enactment of 1925.

The provision in section 44(xi) must be construed strictly. It is a penal provision putting on certain accused persons an ous of disproof.

In any case it was not shewn that while the meter was in the custody of the appellant it had been prevented by artificial means from duly registering.

Premises on which the meter installed were in the name of a Chinese firm but appellant paid the rent, managed the premises, operated on the firm's banking account and had a substantial interest in the profit of the firm. He was the person who could have instructed the Electrical Department to cease supplying premises with energy.

"Consumer" in section 2 not limited to person in contractual relationship with the Electrical Department otherwise an agent of a firm whose principal is absent from the country could tamper with meters with impunity. Must construe the definition widely in order to give a reasonable interpretation.

Cur. Adv. Vult.

Thomas C.J.: This is an appeal by Ng Wui Piang from his conviction and sentence by the Magistrate of Klang in respect of an offence under the Electricity Enactment (Cap. 201). The charge was as follows:—

"That you at 72 Rembau Street, Klang, at a time unspecified did dishonestly prevent the Government installed meter for those premises from recording the output or consumption of energy; an offence under section 40(vii)."

The premises No. 72 Rembau Street are owned by the firm N.S.P.R.M. and are let on a monthly tenancy to Chop Hong Hin. The rent has been paid by the appellant. In those premises there is an electric installation. On the 24th of October Nagalingam Muthiah, a technical assistant in the Electrical Department, was engaged in inspecting meters in Rembau Street. He inspected the meter at 72 Rembau Street, and found that it was not working properly. This was reported to Mr. Ewens, the senior officer, who himself came and inspected the meter. A further examination of the meter then took place. A test was made whilst three electric lamps were switched on and later also a ceiling fan. It was noticed that the disc did not revolve, and that in consequence the meter was not registering the electric energy consumed. A further examination showed that the seal closing the meter had been tampered with, so that access could be obtained to the working parts of the meter. The meter was then taken down and sent to Mr. Ewens' office, where it was subsequently examined. This was done on the following day.

It was then found that the train of wheels, which gives the indication, had been removed by slackening two holding screws on the upper part of the meter. A little lever had been slightly bent, and thereby a small wheel had been slightly thrown out of alignment. In consequence of these matters the meter was running slow. Such an alteration could not have been effected without removing the cover.

It was objected on behalf of the appellant that sufficient care was not taken as to the custody of the meter whilst it was at the office of Mr. Ewens, since
[112] when taken to the office it had [112] been merely placed on his desk. But from the time it was placed there by Mr. Muthiah, Mr. Thambiah, the Chief Clerk, was in the office, and there was then no possibility of its being tampered with prior to the return of Mr. Ewens.

The examination by Mr. Ewens did not take place until the following day; but he says that from the time that he found the meter on his desk up to the time when he gave evidence in the lower Court, the meter was under his charge. No information was given as to where and how the meter was kept, and no question was asked as to this in cross-examination. I am satisfied that when Mr. Ewens said that he had it under his charge, he intended to say that he had it where access to it could not be had by anyone without his knowledge.

It would be desirable in any subsequent case that the meter should be placed at once in a sealed case and kept by some responsible person, and that he should give full particulars in his evidence in chief as to the manner in which it had been kept.

The results of the examination of Mr. Ewens were only to confirm and explain what had already been discovered at No. 72 Rembau Street. And if all the later evidence were eliminated there would still remain the facts that the seal had been tampered with, and that the meter itself was not working properly. These two facts taken together are in my opinion sufficient evidence that the meter had been tampered with, and that the result of that tampering was to prevent the instrument from duly recording the output or consumption of electric energy.

Now, section 40(vii) is as follows:—

"Any person who wilfully injures any meter or other instrument used on or in connection with any Government installation or any licensed installation for recording the output or consumption of energy or dishonestly alters the index of any such meter or instrument or dishonestly prevents any such meter or instrument from duly recodring the output or consumption of energy shall be punishable with fine not exceeding three hundred dollars."

By the amending Enactment in 1933, a new sub-section has been added to section 40 which is as follows:—

"(xi) In any prosecution for an offence under sub-section (i)(c) or (vii), the existence of artificial means for altering the index of any meter or for preventing any meter from duly registering the quantity of electricity supplied, or for abstracting, consuming or using electricity when such meter is under the custody or control of the consumer, shall be *prima facie* evidence that such alteration, prevention, abstraction or consumption, as the case may be, had been fraudulently, knowingly and wilfully, caused by the consumer using such meter or that such consumer has abetted the offence of such alteration, prevention, abstraction or consumption as the case may be."

That amendment casts a serious onus upon a consumer. The appellant contends that he is not a consumer, and that therefore that onus does not fall upon him.

On the meter cards relating to 72 Rembau Street the name Chop Hong Hin, and on those relating to 105 Rembau Street, which is indirectly opposite to 72 Rembau Street and used as a storehouse, appears the name of the appellant.

Meyyappa Chettiar, the agent for the landlords of No. 72 Rembau Street, stated that there was no written agreement as to the tenancy, but he considered that Chop Hong Hin as the tenant. The appellant paid the rent for Chop Hong Hin.

Subdin bin Mohamed Ariffin stated that with regard to 72 Rembau Street, Chop Hong Hin was the consumer, and with regard to 105 Rembau Street the appellant was the consumer owner. A lad used to pay for both premises.

The appellant made a statement from the dock, and said that he was the manager of Chop Hong Hin, and had been the manager for about five years. His wages were $30 a month.

Ng Wee Chuang, a partner in Chop Hong Hin, stated that the appellant was the manager at $30 a month, and that he had no proprietary interest or share in the firm. He is, however, entitled to a bonus on the profits. He operates the banking account. No. 105 Rembau Street is the store-house of the firm.

From the facts the learned Magistrate has held that the appellant is the manager of Chop Hong Hin, with a substantial interest in the profits of the firm. The learned Magistrate has further found that as the manager he is responsible for the premises in which Chop Hong Hin have their business. From this he has deduced that the appellant is the consumer.

Now, the Enactment defines 'consumer' as meaning:

" the person who is supplied with energy or whose premises are for the time being connected for the purposes of a supply of energy with any system of public supply."

This language could hardly be wider. It includes the landlord, the tenant and also the person who is supplied. There is no suggestion that any contractual relationship should be considered. And inasmuch as the Enactment relates to all matters connected with
[113] the supply of energy and [113] to offences committed in connection with the supply, the definition of the word 'consumer' would have to be very wide so as to reach every person to be affected by the Enactment. I am, therefore, satisfied that in construing it there should be no narrowing of its plain meannig by the importation of limitations.

Reference has been made to the use of the word 'consumer' in various sections of the Enactment, with a view to limiting its meaning. Such may well be done where there is no definition of a word. But where there is a definition, then there cannot be any general limitation because in one or other section a more limited interpretation may have been given.

Section 43(ii)(w) and (y) has been specially referred to. This relates mainly to charges and payments in respect of a Government supply only. There is nothing in it to limit the wide language of the definition generally. The Rules at p. 251 of the 1925 Enactments have also been referred to. No doubt it is of general advantage to have a supply regularised by some sort of contract showing the period for which the supply is to be made, the purposes for which the supply is to be made, and allowing the supply to be determined on notice being given. But the fact that such contracts may be entered into cannot exclude from liability, financial or otherwise, persons who may not have entered into any agreement. And even though financially the person supplied might avoid liability by showing that it was the principal and not himself who must be looked to for payment, yet the fact that he has been supplied remains.

Therefore, such a person comes within the definition of 'consumer.' There can be no doubt that in the present case the appellant was such a person. He is admittedly the manager of the business. It would rest entirely with him whether the electricity was supplied or not. Accordingly he comes within the definition of 'consumer,' and inasmuch as the meter was under his control, there is *prima facie* evidence that the alteration of the meter has been fraudulently, knowingly and wilfully caused by him. Of course it was open to him to have produced evidence to show that he was innocent of any offence. He has not chosen to do so. He has not even gone into the witness-box and given evidence.

In my opinion the decision of the learned Magistrate was correct, and this appeal must be dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. ANG POOI & ANOR.

[A. Cr. J. (Pedlow J.) March 20, 1936]

[Selangor Magistrate's Criminal Appeal No. 2 of 1936]

Excise Enactment (Cap. 133), s.54 — Analyst — The Evidence Enactment (Cap. 10), s.45 — Expert evidence.

In a prosecution under the Excise Enactment (Cap. 133) for being in possession of intoxicating liquor it is not only an 'Analyst" defined in section 54 who can give evidence of the amount of alcohol in such liquor. The alcoholic contents of such liquor may be proved by any person experienced in testing such liquor in the course of his duties provided that the Court is satisfied that such person possesses sufficient experience to qualify him to testify as an expert.

Whitton (Deputy Public Prosecutor) for the appel-*Rajasooria* for the respondents.

Pedlow J.: The house in which the respondents lived was raided on the 5th December, 1935, by Mr. Lewis, Assistant Superintendent of Customs, and three outdoor officers, and the respondents were subsequently charged under the Excise Enactment (Cap. 133) before the Magistrate's Court at Kuala Selangor, the woman under section 63(c) with destroying the contents of a saucepan to prevent the seizure thereof and the man with obstruction under section 63(a) and with possession of one pint of intoxicating liquor to wit samsu, contrary to section 6(a). They were acquitted on all charges, and against their acquittal the Public Prosecutor has appealed.

The main facts of the case are that when the outdoor officers entered the shop of the male respondent he sought to prevent their going through to the kitchen at the back of the shop and that when they did reach the kitchen they found the female respondent pouring the liquid contents of a saucepan down the drain at the bathroom. A pint of the contents was rescued and Mr. Lewis gave evidence at the trial that the liquid was samsu.

The learned Magistrate held that, as Mr. Lewis had not been gazetted an analyst within the meaning of section 54 of the Excise Enactment, he was not capable of testing samsu and that, therefore, the fact that the liquid seized was samsu had not been proved. On this ground he dismissed the charge against the woman and the possession charge against the man, and the main point at issue in this appeal is whether he was correct in doing so.